

CITATION: The Polish Alliance of Canada v. Polish Association of Toronto Limited, 2014
ONSC 5095
COURT FILE NO.: CV-08-361644
DATE: 20140903

SUPERIOR COURT OF JUSTICE - ONTARIO

BETWEEN:

THE POLISH ALLIANCE OF CANADA

Plaintiff

AND:

POLISH ASSOCIATION OF TORONTO LIMITED, MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH FLIS and RICHARD RUSEK

Defendants

AND:

POLISH ASSOCIATION OF TORONTO LIMITED, MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS JOHN ARGYRIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH FLIS and RICHARD RUSEK

Plaintiffs by Counterclaim

AND:

THE POLISH ALLIANCE OF CANADA, ROBERT ZAWIERUCHA, TADEUSZ MAZIARZ, ELIZABETH BETOWSKI, DANUTA ZAWIERUCHA, TERESA SZRAMEK, ANDRZEJ SZUBA, ADAM SIKORA, ELZBIETA GAZDA, STANISLAW GIDZINSKI, STANISLAW IWANICKI and TADEUSZ SMIETANA

Defendants by Counterclaim

BEFORE: F.L. Myers J.

COUNSEL: E. Patrick Shea, for Collins Barrow Toronto Limited, Receiver and Manager
Peter Waldmann, for the Plaintiff
Bernie Romano, for the Defendants/Respondents, except for Richard Rusek

HEARD: September 2, 2014

F.L. MYERS J.

ENDORSEMENT

[1] By order dated June 20, 2014 (the "Appointment Order") Collins Barrow Toronto Limited was appointed receiver and manager (the "Receiver") of the assets, undertaking and properties of Branch 1-7 of The Polish Alliance of Canada and Polish Association of Toronto Limited (the "Branch" and the "Corporate Defendant" respectively). The Receiver moves under Rule 41.05 and under paragraph 24 of the Appointment Order, on notice to the parties, for directions concerning a number of matters that have arisen during its brief tenure.

[2] At the hearing of the motion, The Polish Alliance of Canada ("PAC") delivered a motion for leave to sue the Receiver and two of its officers personally for alleged misconduct. The motion was not intended to proceed on September 2, 2014, but the PAC relied upon the evidence in its motion record and other material filed in response to the Receiver's motion.

Background

[3] By order dated May 27, 2014, the Court resolved a trial of the issues between the parties concerning the ownership of the properties of the Branch. At its core, the case concerns a dispute between the local branch of a national association and the national association itself concerning ownership and control over those properties. Although the Branch's historic clubhouse is a modest building, the land upon which it sits is very valuable for development purposes on the waterfront in Toronto. In the May 27, 2014 order, the Court essentially found that the property of the Branch and the Corporate Defendant was beneficially owned by the members of the Branch and not by the national PAC. The Corporate Defendant owns legal title to the bulk of the Branch's land and holds the land in trust for the members of the Branch. As a result of internal corporate law issues and the law applicable to ownership of property by not-for-profit corporations, the Court found that the PAC was trustee of the shares of the Corporate Defendant, but that the management of the legal title to the shares fell within the purview of the executive of the Branch.

[4] The Defendants were the longtime executive of the Branch. In the trial of the issues, they claimed that the Branch left the PAC in 2006 and had successfully taken the members' properties with them. The Court did not agree with the Defendants. It held that since the Defendants had voluntarily resigned from the PAC, they no longer represent the members of the Branch in whom beneficial title to the shares and the lands resides. But, on the facts, the Court held that the Branch continues to exist although the identity of its members was not clear and there is no validly elected executive in place to manage the Branch members' properties.

[5] The Court called for submissions from the parties as to how to deal with these issues during the trial of the issues. Paragraph 90 of the Court's Reasons for Decision dated May 27, 2014 provides:

[90] Early in the trial, I advised counsel and the parties that I had the authority to add terms or conditions to any declaration that I might make and I invited counsel to consider

terms that might be appropriate - especially any that might be helpful to protect the membership generally. I have the authority to add terms to my declaratory orders whether under the general law and rules applicable to declaratory orders (see *Jordan v. McKenzie* (1998), 3 C.P.C. (2d) 220 (O.H.C.J.)) or as an additional issue that I am authorized to raise under the Order to Campbell J. establishing this trial of the issues. That is, I raised an issue as to the remedial terms that should properly follow from the declarations being sought. Counsel both proposed terms and made argument on the terms proposed. In paragraph [22] above, I referred to terms suggested by Mr. Romano to alleviate concerns raised by the PAC with respect to the corporate structure of PATL. In closing argument, Mr. Waldmann for the PAC fairly invited me to make the following directions as conditions in respect of the declarations that he sought:

- (A) The PAC will recognize as continuing members of Branch 1-7 of The Polish Alliance of Canada all those who were members as at August 26, 2006 without any requirement to re-apply or to pay arrears from August 26, 2006 provided that the members did not know that their dues were not being paid to the PAC;
- (B) The PAC will accept membership applications for Branch 1-7 of The Polish Alliance of Canada in the ordinary course from anyone who qualifies other than the defendants;

[6] The Court accepted these submissions and views them as commitments of the PAC to the Court. In any event, they were incorporated in the May 27, 2014 order. Paragraph 1 of that order provides:

THIS COURT ORDERS that the PAC will recognize as continuing members of Branch 1-7 of the PAC all those who were members as at August 26, 2006 without any requirement to re-apply or to pay arrears from August 26, 2006 provided that the members did not know that their dues were not being paid to the PAC.

[7] The May 27, 2014 order provides as well that the PAC should see to the reconstitution of the executive of the Branch and that, in the interim, the parties should agree upon a neutral third party to hold the Branch members' properties failing which the Court would consider a motion to appoint a receiver to do so.

[8] By urgent motion returnable June 20, 2014, the PAC sought the appointment of the Receiver and the Court made the appointment as sought. At that time, the Defendants were seeking to hold a meeting to elect a new executive of the Branch. The Court held that this was impermissible as the Defendants were no longer part of the Branch or the PAC. Paragraphs 7 and 8 of the Court's Endorsement dated June 20, 2014 provide:

[7] Absent agreement on a neutral third party, it is just, convenient and urgent to appoint Collins Barrow Toronto Limited as receiver and manager of the Lakeshore Property (as defined in my Reasons for Judgment), 32 Twenty-Fourth Street and PATL pursuant to Rule 60.02(1)(d), s.101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43 and my Order of May 27, 2014. The Receiver is to hold the properties as a neutral officer of the court and is not to take direction from the PAC, the defendants or anyone else. The receiver is to do as little as it views as reasonably possible to take control of all assets of, or held in trust for, the members of the Branch and to hold those assets pending the election of a new executive of the Branch. It should try to allow ongoing programs and uses of the premises as planned subject always to its reasonable concerns for security and protection of the properties under its control.

[8] The receiver will also oversee and supervise the efforts by the PAC to reconstitute the Branch and its executive. The receiver shall report to the court as often as it deems advisable to ensure that the provisions of the court's orders are being observed. The PAC made certain commitments concerning the reconstitution of the Branch that I incorporated into my Order. I expect that my Order will be followed to the letter and in spirit. All that is required for a pre-August 26, 2006 member to be affirmed by the PAC is that he or she did not know that his or her dues were not being forwarded to the PAC. No loyalty oath was proposed by Mr. Waldmann at trial or incorporated into my Order. As to approval of new members in the ordinary course by the PAC as I have ordered, the ordinary course for this organization has not involved an inquisition. The mere fact that someone may have been at a meeting in which the defendants induced him or her to support a change of the name of the Branch to the old name of the "mother branch", for example, is not, to my mind, *ipso facto* proof that those members chose to leave the PAC or are disloyal. I spoke of that event and the defendants' tactical purposes in changing the name of their group in my Reasons for Judgment. There is no indication that the general body of members knew or participated in the tactics of the leadership. All of the principals in this litigation are charismatic leaders with legal teams behind them. The lay members have been caught up in these events. **It was and is my expectation that the reconstitution of the Branch will be conducted as a good faith effort to protect the Polish community of Toronto and in a spirit of reconciliation with the membership at large. The receiver shall ensure that this is so or report to the court any concerns that it may have.** [Emphasis in original]

[9] As a final note of background, in the May 27, 2014 Reasons for Decision, the Court discusses at several places the unfortunate and overwhelming degree of antipathy between the parties. Leaders on both sides were found to have had serious credibility issues in their testimony. Several of the defendants were found to have committed improper acts. However, the Court also accepted the honesty and legitimacy of the defendants' concerns about the true motive of the PAC to unlawfully appropriate the local Branch members' lands through its autocratic and dictatorial acts. Hence, the PAC's confirmation of its recognition of existing members of the Branch in whom beneficial title resides without the need to re-apply through the PAC was an important condition to prevent the PAC from inappropriately taking steps designed to seize unlawfully the valuable property belonging to the members of the Branch.

[10] Unfortunately, the submissions and conduct of the PAC during the receivership have raised serious concerns for the Receiver and the Court. The PAC has now taken the position that despite its submission quoted in paragraph 90(A) of the Reasons for Decision dated May 27, 2014 and para. 1 of the order of May 27, 2014, there are no existing members of the Branch and only people who apply to the PAC can be recognized as members. This is directly contrary to its commitment at trial. Moreover, as noted below, the PAC has been sharply critical of the conduct of the Receiver (whose appointment it sought). Mr. Waldmann complains that “we thought we won” but now see the Receiver dealing with the defendants who “made a Declaration of Independence and Rebellion” against the PAC.

[11] I do not know why the PAC would have thought that it won the trial of the issues. In paragraphs 93 and 94 of the Endorsement dated May 27, 2014, the Court wrote:

[93] I do not regard either side as having been successful in this proceeding. **The plaintiff's success is that it holds paper title to a corporation that is itself a trustee. That has no practical value. The plaintiff did not win equitable title to the properties. Moreover, its claim to own the branches' properties was not reasonable in light of its history and its own witnesses' testimony. The defendants had good reason to suspect the plaintiff's *bona fides*.** The defendants, by contrast, failed in their efforts to secede from the PAC with the properties of Branch 1-7. They proved that the members of Branch 1-7 hold equitable title to their properties, but the defendants themselves are not among those members/owners. Their days in the PAC are over due to their own choices. Moreover their acts, however motivated, may have seriously jeopardized the interests of the PAC as a whole and their own members' status and insurance.

[94] This litigation has been typified by tactics and a lack of cooperation. The 2007 effort by the PAC to repeal the amendment to Article 8 of its constitution and the 2013 shareholders' meeting of PATL are both examples of legally-driven, transparent, and ultimately invalid tactics. Both sides played production of documents games procedurally. There was little or no cooperation among counsel in preparation for the trial. There were surprises during the trial. Instead of a joint book of documents and cooperation as ordered at the pre-trial conference, hundreds of documents were filed unnecessarily with no prior agreement on admissibility. **The testimony of the lead witnesses on both sides was repeatedly and successfully impeached. In all, neither side behaved like transparent and accountable fiduciaries fulfilling their duties of care, honesty and good faith as the members of the PAC are entitled to expect. I order that there be no costs of this trial of the issues.** [Emphasis added]

[12] The Court's efforts to protect the beneficial owners from the strong-arm tactics of both sides is clear in its Reasons for Decision dated May 27, 2014 and the endorsement dated June 20, 2014. On hearing the PAC's motion to appoint the Receiver, the Court feared that the PAC might think that a Court-appointed receiver would do the PAC's bidding. The Court included in the endorsement of June 20, 2014 the express provision (which the Receiver would have understood implicitly in any event) that the Receiver was not “to take direction from the PAC, the defendants or anyone else” in carrying out its mandate as an officer of the Court. Moreover, the Court expressly instructed the Receiver to oversee the efforts of the PAC to reconstitute the

executive of the Branch in light of comments made by Mr. Waldmann at that hearing that led the Court to fear that there could be an inconsistency between the PAC's commitments at trial and its actions after trial. As emphasized in the June 20, 2014 endorsement, it remains the Court's expectation that the parties approach the reconstitution of the Branch executive in a spirit of reconciliation with the members who are the beneficial owners of the Branch's properties. Unfortunately, that has not yet come to pass.

Directions sought by the Receiver

[13] In light of the PAC's motion to lift the stay to allow it to sue the Receiver, the Receiver quite properly asked to adjourn the portions of its motion that had sought approval of its activities and its fees and disbursements pending the resolution of the PAC's motion. Those aspects of the motion are adjourned to a date to be set before me subject to the specific items that were argued and are dealt with below.

[14] The PAC argues that the Court is *functus* in light of the entry of the May 27 and June 20, 2014 orders. The trial of the issues is over. The motion before the Court is for directions under Rule 41.05 and under para. 24 of the Appointment Order. The Court is not *functus* for those purposes.

i. Documents and Squatters' Presence at the Clubhouse

[15] The PAC wants to tour the Branch's properties and to review the Branch's documents that are now under the control of the Receiver. Mr. Romano asserts that there are privileged documents of the defendants among the documents at the Branch's properties. The PAC is critical of the Receiver, accusing it of being one-sided, since the Receiver has continued to allow some of the Defendants to access the Branch clubhouse and not the PAC. The PAC objects to the presence of "squatters" at the Branch's properties.

[16] The PAC does not own the clubhouse or any of the Branch's properties. At most, it has bare legal title to the shares of the Corporate Defendant and even that title is to be managed by the executive of the Branch once it is reconstituted. The PAC has no particular need to visit the clubhouse right now and certainly none to see the defendants' privileged documents.

[17] The Receiver and its counsel could conduct a documents' sweep and review 100 years of documents for privilege. It sees no reason to incur the time and expense of such activity. This is doubly the case because the PAC is already complaining aggressively about the Receiver's fees and disbursements even in the limited manner by which the Receiver has been carrying out its mandate as instructed.

[18] That brings me directly to the presence of defendants on the site. While the defendants are no longer members of the PAC or the Branch, it cannot be denied that they have been managing the clubhouse and the properties for the past two decades plus. Receivers, trustees and other court appointed business administrators are typically experienced accountants and are expert in running other people's businesses with transparent reporting and due oversight by the parties and the Court. But they are generally not experts in the substance of the businesses that they oversee. To keep costs down and minimize, as much as reasonably possible, the use of expensive accounting professionals who may know little about how to run Polish community

events, it is quite normal for a receiver to utilize existing staff for their know-how under appropriate oversight and financial controls. Here, the Receiver declined to terminate the employment of Mrs. Miasik in order to continue to utilize her services organizing and running community events while ensuring that the Receiver had physical control of the premises and all finances. By not firing Mrs. Miasik, the Receiver has also prevented a claim for termination and severance pay by a long-term employee from arising. The Receiver has allowed a number of the defendants to attend the site to help set up tables for events or to help run dinners that had already been planned. All of this was prudent, neutral, and perfectly consistent with the Court's direction that the Receiver to do as little as possible to incur costs or to interfere with the community events at the site. For the PAC to characterize this type of activity as one-sided, tortious or giving "squatters" rights belies a misunderstanding of how receiverships are intended to operate. Moreover, whether there is ever a rapprochement with the defendants, it is undeniable that they have spent their lives building the Branch and have relationships with the members of the Branch. The PAC's notion that the defendants should be barred from the Branch's properties highlights the PAC's inability to rise above the litigation to try to reconcile with members.

[19] The Receiver should continue to maintain the *status quo* in respect of documents and site access utilizing its best judgment on both accounts going forward and reporting to the Court if, in the Receiver's judgment, it becomes necessary or desirable to do so.

ii. Mr. Miasik's Personal Property

[20] The PAC also complains that the Receiver allowed Mr. Miasik to remove some of his personal belongings from the clubhouse. The PAC offered no legal basis for the Receiver to seize Mr. Miasik's property or to deny Mr. Miasik his property as some form of leverage over him in litigation or otherwise. This is an excellent example of why a Receiver is appointed when parties are already litigating. The Receiver brings dispassionate judgment to resolve simple matters rather than trying to find more ways to seek leverage or further litigation. The Receiver's judgment that Mr. Miasik was entitled to retrieve his property was not challenged on the merits by the PAC. Rather, the PAC does not like the fact that the Receiver is not helping it in its war on the defendants. That is not the Receiver's role. This aspect of the Receiver's conduct is approved.

iii. Who Bears the Receiver's Fees?

[21] In paragraph 18 of the Appointment Order, the PAC was required to provide a retainer to the Receiver of \$25,000. The order provides that the retainer is to be held by the Receiver to be applied against its final account. In the interim, the Receiver is to deliver accounts and, if it believes that its aggregate fees and disbursements will exceed \$25,000, it may apply for its discharge. The Receiver's billed fees and disbursements already exceed \$25,000. It would like to have access to the retainer. It is not asking for a discharge at this time as it has a Court-ordered first charge against the assets under its control. There is a stand-alone property that could be sold, if needed, to pay the Receiver's fees and disbursements without having to sell the valuable clubhouse waterfront property. Paragraph 10 of the endorsement of June 20, 2014 is consistent with this reading of the Appointment Order and does not alter the Receiver's entitlement. The Receiver will be paid from the properties under its control if no one else steps

up to pay. The Receiver will have access to the \$25,000 retainer to help pay its final bill. If and when that occurs, the PAC will be entitled to assert a claim for indemnity against the Branch if it chooses to do so. The Court appreciates the Receiver's continued willingness to serve despite the cash flow deferral that it is currently incurring.

[22] The PAC will have an opportunity to comment on the Receiver's fees and disbursements at the return of the Receiver's fee approval motion. A party to the Appointment Order need not sue the Receiver in order to have standing at a fee approval hearing required by the Appointment Order.

iv. Branch Membership and Executive Election

[23] The Receiver discovered a membership ledger of the Branch that was not disclosed by the defendants at the trial of the issues. It provided the ledger to the parties and to the Court. The PAC criticized the Receiver for continuing to communicate with the defendants who are no longer members of the PAC. The Receiver is aware however that both sides have appealed from the outcome of the trial of the issues. It is quite properly seeking input from the defendants whose rights are certainly implicated if they succeed in their appeal. Moreover, the defendants have decades of firsthand knowledge concerning the membership and management of the Branch. The Receiver is not being directed by the defendants any more than it is being directed by the PAC. It cannot be faulted for keeping both sides fully informed and listening to the comments received back from each.

[24] The Receiver reviewed the members' ledger and developed a chart of possible members as of August 26, 2006. Members who were members of the Branch in 2006 and remained members of the defendants' break-away branch are the current beneficial owners of the Branch's property whom the PAC committed and has been ordered to recognize as long as they did not know that their dues were not being passed on to the PAC by the defendants. The Receiver took comments from the parties on the draft lists and, at Appendix "M" to its 1st Report, listed its own comments and Mr. Waldmann's comments. From that Appendix, the Receiver drew 39 names - all of whom appeared to qualify as members of the Branch at August 26, 2006. Of those 39, 19 appear to have not kept up their dues to the end of 2013 and hence their membership would have lapsed. The remaining 20 people, listed at Appendix "N" to the Receiver's 1st Report, appear to qualify as remaining members of the Branch. The PAC complains that some of those are family members of the defendants and hence they must have known that the defendants were not passing on their dues to the PAC. Assuming that family members may have known that their parents or in-laws thought they had left the PAC in 2006, this is not the correct inquiry. As found in the May 27, 2014 Reason for Decision, the PAC allowed the post-2006 break-away body to continue to function and hold itself out as if it was a branch of the PAC. Moreover, the PAC did not apply its automatic expulsion rules to the Branch both before and after August 26, 2006. It is not self-evident that just because someone knew the defendants tried to take the Branch out of the PAC in 2006, that what went on afterward was not part and parcel of the PAC. The inquiry proposed by the PAC and ordered by the Court is whether members at August 26, 2006 who stayed on with the defendants knew that their dues were not being passed on to the PAC. How is that to be determined?

[25] The PAC says that all pre-August 26, 2006 members were automatically expelled under its constitution so that there are no remaining members. The PAC agreed and the Court also ordered the PAC to accept membership application for the Branch going forward. The PAC says it has admitted 18 members just last week who are now the members of the Branch for the purposes of electing an executive. For anyone else to be acknowledged as a member of the Branch, the PAC argues, such person must first apply to the PAC. In light of the PAC's commitment to the Court in para. 90(A) and para. 1 of the Court's order dated May 27, 2014, it is not open to the PAC to now deny that there are any members remaining from August 26, 2006. The change of position is not appropriate or allowable. Moreover, branch members are not appointed by the PAC under its constitution. Rather, members are appointed by each branch and then their names are submitted to the PAC for approval (usually rubber-stamping). The PAC has no authority to unilaterally appoint members of the Branch. The PAC has essentially tried to round up a few members to take control of the election just as the defendants tried to do leading up to the appointment of the Receiver on June 20, 2014.

[26] The Court noted, in the endorsement dated June 20, 2014, that loyalty oaths and inquisitions of applicants were not consistent with membership admission practices of the PAC of which testimony was given at trial. The Court accepts the Receiver's recommendation that the 19 members identified by the Receiver be recognized as the members for the purposes of electing an executive of the Branch. Prior to being allowed to vote, each member must sign a statement that he or she did not know that his or her dues were not being paid to the PAC from August 27, 2006 to May 27, 2014 if he or she is able to do so. If a member cannot or will not so confirm, then he or she will not be recognized as a member of the Branch at this time. Following the PAC constitution *mutatis mutandis*, the Receiver is to canvass the voting members to determine a slate to stand for election to the executive from among their numbers.¹ The Receiver shall hold an election as quickly as is practicable. If a meeting is called for that purpose, notice should be given to voters individually. There is no reason to advertise to the public. The Receiver will appoint a neutral chair for the meeting who should be Polish speaking if practicable.

[27] The PAC says that Canada is a democracy and the corporate entities involved should be controlled by their shareholders' duly elected representatives. The Court agrees. In the Court's view, a democratic process is one in which the duly qualified voters exercise self-determination. The PAC dictating outcomes to beneficial title holders concerning their property is not the Court's view of a democratic outcome. Neither is it appropriate, just, convenient or reasonable to unleash the PAC's lawyers on Branch members to test their loyalty and knowledge. Nothing helpful can come from that process other than more litigation not to mention hard feelings and distrust. The Court would expect anyone participating in the election being held pursuant to the Court's orders to have the protection of section 142 of the *Courts of Justice Act* in any event.

¹ This is analogous to the PAC constitution in that the Receiver is already carrying out the current authority of the executive of the Branch. It is also similar to how a trustee in bankruptcy approaches creditors seeking nominations for the inspectors of a bankrupt estate and falls squarely within the kinds of duties a Court would expect its receiver to be readily able to perform.

Possible Stay Pending Appeal

[28] The election of a new executive must necessarily precede the admission of new Branch members as there must be an executive in place in order to admit new members as noted above. In the Court's view, too much time has elapsed already being consumed in unnecessarily nasty communication and unhelpful posturing. This has resulted in increased fees and disbursements by all professionals including the Receiver and its counsel. Moreover, it has delayed any notion of healing among the PAC, the Branch, and its members so that the properties of the members can be managed in the members' interests and in furtherance of the beneficent goals of the PAC.

[29] I am advised that a stay of the May 27, 2014 order is being sought by the defendants in the Court of Appeal, but that the date currently picked by the defendants' counsel for that motion is not available for Mr Waldmann. Moreover, Mr. Waldmann advises that it is the PAC's position that the May 27, 2014 order was interlocutory since it resolved only a trial of the issues. As such, it is the PAC's position that an appeal lies only to the Divisional Court with leave of the Court being necessary and the defendants are too late to use that route. It is, therefore, not at all clear when a stay motion will be heard on the merits before the correct appellate court. It seems to me that unless or until stayed, this Court should continue to enforce its orders in the best interests of the parties and the members of the Branch. The sooner that an executive is elected, the sooner the accrual of Receiver's fees can be ended, and the sooner that the Branch's properties can be tended by their beneficial owners. Although the defendants are the ones seeking a stay, they do not object to an election on the basis set out in this Endorsement despite the fact that the defendants are being deprived of the right to vote pending a successful appeal. Accordingly, the Court will proceed with the ongoing supervision of the receivership and the enforcement of the May 27, 2014 unless or until an appellate court rules otherwise.

[30] The Court will advise the parties shortly concerning dates for the hearing of the matters adjourned herein; the date for the hearing of the PAC's motion for leave to sue the Receiver if pressed; and the possible appointment of a new Case Management Judge consequent on the retirement of the former Case Management Judge. Order to go in terms of the directions provided herein. The Receiver should prepare a draft order for review and comment by Mr. Waldmann and Mr. Romano. If the parties do not agree to language within a week, then the then-current draft order and a blackline showing other parties' positions may be sent to me by email to be settled.

Justice F.L. Myers

F.L. Myers J.

Date: September 3, 2014